

Background

Pursuant to Section 1413 of Public Law 108-136 ("National Defense Authorization Act for Fiscal Year 2004"), the Office of Personnel Management (OPM) published an interim regulation on August 4, 2005, regarding Federal acquisition positions covered under Title 41, United States Code (U.S.C.) 433 (g)(1)(A) (the "Office of Federal Procurement Policy Act"). This regulation allows civilian agencies to use "direct-hire" authority to recruit and appoint highly qualified individuals for "difficult-to-fill" Federal acquisition positions deemed to be a shortage¹ category under the Services Acquisition Reform Act of 2003. The policy enunciated below constitutes the Department's implementation of OPM's regulation.

Non-Department of Defense agencies may designate specific "difficult-to-fill" positions within the following broad Federal acquisition categories: entry-level positions in the General Schedule contracting series (GS-1102); senior positions in the General Schedule contracting series (GS-1102); all positions in the General Schedule purchasing series (GS-1105); and positions in other General Schedule series in which significant acquisition-related functions are performed.²

Direct-hire authority allows an agency the flexibility to appoint individuals to these positions without regard to Veterans' preference, the "Rule of Three,"³ and rating/ranking procedures⁴ when there is a shortage of highly qualified candidates, and allows agencies to staff critical positions quickly. Additional information on direct-hire authority is available at the following websites:

http://www.opm.gov/Strategic_Management_of_Human_Capital/fhfr/FLX03010.asp and
http://www.opm.gov/employ/direct_hire/index.asp.

In October 2005, the Office of Human Resources (OHR)/ASAM, in coordination with the Office of Acquisition Management and Policy (OAMP)/ASAM, issued a "Questionnaire on Direct-Hire Authority for Certain Federal Acquisition Positions" to your Directors of Human Resource Centers and Heads of Contracting Activity to determine whether there is a shortage of highly qualified individuals for "difficult-to-fill" acquisition positions. The results of the study are presented in a report (available upon your request) entitled "Workforce Analysis: A Report on Direct-Hire Authority for 'Difficult-to-Fill' HHS Acquisition Positions." This report provides supporting evidence that: a shortage of highly qualified individuals for certain Federal acquisition positions exists at the U.S. Department of Health and Human Services (HHS); and certain acquisition positions have been "difficult to fill." In this report, HHS has identified its "difficult-to-fill" positions as the following: entry level (GS-5/7/9) GS-1102s, GS-1102s at grades GS-12 and above, CORs/COTRs ("Project Officers") at grades GS-12 and above, and Program and Project Managers at grades GS-12 and above.

¹ An agency's determination of the existence of a shortage of highly qualified individuals must be based on supporting evidence prescribed in section 337.204(b) of Title 5, Code of Federal Regulations (CFR) ("Administrative Personnel").

² Other General Schedule series in which significant acquisition-related functions are performed include GS-1106s (Procurement Clerks/Technicians), Contracting Officer Representatives (CORs)/Contracting Officer Technical Representatives (COTRs) (also known as "Project Officers"), and Program/Project managers who are directly involved in managing a contract(s).

³ The "Rule of Three" requires selecting officials, when hiring employees into competitive service jobs, to choose from among the highest three eligibles available on the certificate. (5 CFR 332.404) ("The Veterans' Preference Act of 1944").

⁴ Under traditional rating/ranking procedures, human resource specialists determine the assessment score, identify Veteran's status, combine assessment score and Veteran's preference and apply the "Rule of Three" by selecting from the top three ranked applicants.

Authority

Public Law 108-136, Section 1413
Title 41, U.S.C. 433(g)(1)(A)
Title 5 CFR 337.204(b)
5 U.S.C. 3327 and 3330
5 CFR, Part 330, Subpart G

Policy

OPDIV/STAFFDIV Heads or their designees (HR Directors and Directors, Client Services Divisions⁵) are hereby authorized to use direct-hire authority to recruit and select qualified individuals at all geographic locations for the following positions: (a) GS-1102s at grades GS-9 and above, CORs/COTRs ("Project Officers") at grades GS-12 and above, and Program and Project Managers at grades GS-12 and above; and (b) GS-1102s, GS-1105s, GS-1106s, CORs/COTRs ("Project Officers") and Program/Project Managers at any grade level (with the exception of grades GS-5/7 for GS-1102s⁶) as a result of a public health emergency.⁷ Recruitment and selection authority may be redelegated to the Heads of Contracting Activity (or designees), but the final appointment authority resides with the HR Directors and Directors, Client Services Divisions.

Prior to official appointments being made, the Department's Senior Procurement Executive (OAMP/ASAM) in conjunction with the Deputy Assistant Secretary for Human Resources (or designee), shall approve the selection of all GS-1102s, CORs/COTRs ("Project Officers"), and **Program/Project Managers who are directly involved with monitoring vendor performance under one or more contracts,**⁸ at grades GS-15 and above, for the acquisition positions identified above.

OPDIVs/STAFFDIVs may grant individuals in the positions and situations listed above competitive service career, career-conditional, term, temporary, emergency indefinite, or overseas limited appointments, as appropriate. The use of direct-hire authority is effective immediately and is valid through September 30, 2007.

HHS Public Notice Requirements

Although the Government-wide Direct-Hire Authority permits hiring without regard to Veterans preference, the "Rule of Three," and rating/ranking procedures, you **must** comply with:

⁵ The HR Directors and Directors, Client Services Division include the Human Resources Center Directors, Client Services Division (Rockville, Baltimore, and Atlanta), as well as the HR Director and Director, Client Services Division for the National Institutes of Health and the Indian Health Service.

⁶ Positions at the GS-5/7 level in the GS-1102 series are covered by the *Luevano* Consent Decree (available at <http://www.opm.gov/employ/luevano.asp>); therefore, they are not covered by this direct-hire policy. Additionally, CORs/COTRs/Project Officers and Program/Project Managers at the GS-5/7 level may fall under one of the applicable job series covered by the *Luevano* Consent Decree. See http://www.opm.gov/deu/Handbook_2003/DEOH-Appendix-4.asp. If so, this policy does not apply to them.

⁷ Pursuant to 42 U.S.C. 247d ("The Public Health Service Act"), the Secretary of HHS may determine whether a public health emergency exists. Also, the President can declare an emergency under the Stafford Act. One of these declarations must occur before this policy can be invoked.

⁸ CORs/COTRs ("Project Officers") and Program/Project Managers hired under this HHS direct-hire policy **must** be directly involved with monitoring/managing a contract. The monitoring and managing of contract(s) shall be the primary focus of the COR/COTR ("Project Officer") and Program/Project Manager's job duties. Compliance with this policy is subject to review by OAMP and OHR.

- a) Public notice requirements under 5 U.S.C. 3327 and 3330;
- b) Career transition requirements (CTAP/ICTAP) under 5 CFR Part 330, subpart G.;
- c) Basic qualification requirements for the position (5 CFR Part 338).

Specifically, when recruiting and collecting applications from all sources (including job fairs), please meet the following public notice requirements:

1. Prepare and post a vacancy announcement that contains the following language:

"This position is being filled through the Office of Personnel Management's Government-wide Direct-Hire Authority for this occupation and is Open to all U.S. Citizens.

All applicants who meet the basic qualification requirements will be forwarded to the Selecting Official for consideration. The "Rule of Three," Veterans Preference and traditional rating and ranking of applications do not apply to this vacancy.

Selections made under this bulletin will be processed as new appointments to the civil service. Current civil service employees would, therefore, be given new appointments to the civil service."

2. Once the announcement has closed, perform a basic qualification assessment of each applicant in accordance with OPM's Qualification Standards for

General Schedule Positions <http://www.opm.gov/qualifications/sec-iv/b/gsl100/1102.htm>

3. Prepare and forward to the Selecting Official a list of qualified candidates annotating any qualified Career Transition Assistance Program (CTAP)/Interagency Career Transition Assistance Program (ICTAP) eligibles (if applicable)⁹.

4. If you have received an application(s) from a qualified CTAP/ICTAP eligible(s), inform the Selecting Official that they must select the CTAP/ICTAP eligible before any other candidate(s)¹⁰.

5. If you have not received any applications from qualified CTAP/ICTAP eligible(s) by the closing date of the announcement, you are free to offer a job to any qualified candidate(s).

Documenting Personnel Actions

When documenting Direct-Hire Authority appointments on the SF-50/52, *Notification of Personnel Action or Request for Personnel Action*, you must use the following Nature of Action authority codes for Government-wide Direct-Hire Authority:

1. **AYM** as the 1st authority, identifying the appointment under 5 CFR Part 337 (the code "AYM" automatically fills in "Reg. 337.201" on the Notification of Personnel Action, Standard Form (SF) 50); and
2. **BAE** as the 2nd authority, which is unique to this occupation's Government-wide Direct-Hire Authority.

⁹ If there are well qualified CTAP/ICTAP applicants, they should be placed on a separate certificate and not placed on the same competitive selection certificate as other applicants. Those CTAP/ICTAP applicants are referred only while informing the selection official they must be selected before any other qualified candidates.

¹⁰ Id.

Both authority codes must be used when making Direct-Hire appointments to enable OPM to evaluate the use of this authority without requiring Agency reports.

Reporting

The HR Directors and Directors, Client Services Division must maintain a file for documentation and reporting purposes and shall submit a report to the Deputy Assistant Secretary for Human Resources by close of business December 21, 2006 on their implementation and use of direct-hire authority for "difficult-to-fill" acquisition positions within their OPDIV/STAFFDIV.

The report shall contain, at a minimum, the following information for CY 2006:

- 1) The number of direct-hire appointments by job series and title (i.e., GS-1102, GS-1105s, GS-1106s, CORs/COTRs ("Project Officers"), and Program and Project Managers);
- 2) Geographic location of the direct-hire appointment;
- 3) Type of direct-hire appointment (competitive service career, career-conditional, term, temporary, emergency indefinite, or overseas limited appointment);
- 4) Pay plan, grade, and organization for each direct-hire appointment;
- 5) Copy of the vacancy announcement and Request for Personnel Action (SF-52); and
- 6) The reason for the direct-hire appointment (e.g., for a "difficult-to-fill" position or for an emergency situation).

If you have any questions, contact Donna Jackson, OHR, at (202) 690-6137 or Linda Stivaletti-Petty, OAMP, at (202) 720-1906.